

REMARKS

Favorable reconsideration of the application is respectfully requested in light of the amendments and remarks herein.

Claims 1-17 are pending in this application. By the present Amendment, independent Claims 1 and 14 are amended.

Claims 1-6 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,878,033 ("Mouly") in view of U.S. Patent No. 6,067,566 ("Moline"). Claims 7-13 were rejected under §103 over the Mouly/Moline combination in further view of the Cheng, Boyle or Lindholm patents. Applicants respectfully submit that all claims in this application, at least in the form presented herein, are patentably distinguishable from the cited references for at least the following reasons:

The Final Office Action relied primarily upon Mouly for disclosing a scheduled message providing information about service messages that are transmitted in an associated schedule period, where a given service message may be transmitted repeatedly in the schedule period. Mouly teaches that it is possible for a service message to have been transmitted in a preceding schedule period; and Mouly purportedly adds a category cue to indicate whether or not that service message was previously transmitted.

The present invention is markedly different from the technique taught by Mouly, in that with the present invention, as defined by amended Claims 1 and 14, plural broadcast objects are transmitted in a broadcast cycle, and a broadcast object of a current broadcast cycle includes a header defining a repetition distance which is the distance between the completed transmission of the broadcast object and its next repetition. The repetition distance is broadcast-cycle-independent such that the next repetition of the current cycle broadcast object, associated with

the repetition distance, occurs in a future broadcast cycle if there are no remaining transmissions of the broadcast object in the current broadcast cycle. Thus, the method of the present invention provides an indication of the distance to the next repetition, which may occur in a future broadcast cycle. This is in stark contrast to the Mouly system, which is only concerned with indicating whether or not a message has already been transmitted in a previous broadcast cycle (i.e., schedule period), or in the current schedule period.

Further, the header in the Moline patent, even if added to the Mouly object, would still not result in Applicant's invention since Mouly's cues relate to transmissions during previous or current schedule periods, not future broadcast cycles (as the case may be) as set forth in Applicants' claims.

Accordingly, in light of the significant differences with respect to the prior art just discussed, independent Claims 1 and 14 are patentably distinguishable from any proper combination of Mouly and Moline.

It is further contended that the Moline reference is non-analogous art to the present invention, and therefore cannot be properly applied to reject Applicants' claims. It is well established that non-analogous art cannot be considered pertinent prior art under 35 U.S.C. 103. *See in re Pagliaro*, 210 USPQ at 892 (CCPA 1981). The determination as to whether a reference is from a nonanalogous art is two fold. First, it must be decided if the reference is within the field of the inventor's endeavor. If it is not, it must be determined whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. *See In re Wood*, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979). In the case of *In re Clay*, 966 F.2d 656, 23 USPQ2d 1058 (Fed.Cir. 1992) the court held:

"A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with

which it deals logically would have commended itself to an inventor's attention in considering the problem."

In the present case, the Moline patent does not satisfy the above well established test of a reference falling into the category of analogous art. First, Moline is not within the field of the present inventors' endeavor. The present invention relates to a method for determining access times of repeatedly broadcast objects in a broadcast channel using a unidirectional communication scheme. By contrast, Moline relates to distributing live performances on MIDI (Musical Instrument Digital Interface) devices via a non-real-time network protocol, such as the Internet protocol. Evidencing the different fields between the Moline patent and the Mouly patent applied in combination, Moline is classified by the USPTO in U.S. classes 709 and 345; whereas Mouly is classified in classes 370 and 455, defined as follows:

Class 709 (Moline): Electrical computers and digital processing systems: multiple computer of process coordinating.

Class 345 (Moline): Computer graphics processing, operator interface processing, and selective visual display systems.

Class 370 (Mouly): Multiplex communications.

Class 455 (Mouly): Telecommunications.

Accordingly, Moline is neither within the field of the present inventors' endeavor, nor is it within the field of the Mouly reference applied in combination.

Secondly, Moline is not reasonably pertinent to the particular problem with which the inventor was involved, thus failing the second prong of the test. Moline deals with the problems of transmitting a live broadcast in a non-real-time network protocol such as the TCP/IP protocol. On the other hand, the present invention is directed to the problem of determining access times of a repeatedly broadcast object in a broadcast channel using a unidirectional communication scheme. It is clear that the matter with which Moline deals would not logically have commended

itself to the present inventors' attention in considering the problem solved by the present invention.

Therefore, as Moline fails both prongs of the analogous art test, Moline is non-analogous art to the present invention and cannot be properly applied in an obviousness analysis.

Moreover, it is well established that when a rejection depends on a combination of references, there must be some teaching, suggestion or motivation to combine the references. *See In re Rouffet*, 149 F.3d 1350, 47 USPQ 2d 1453 (Fed.Cir.1998). To prevent the use of hindsight, the examiner is required to show a motivation to combine the references that create the case of obviousness. In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. *Id* at 1357. Further, in *Winner Int'l Royalty Corp. v. Wang*, 202 F.3d 1340 (January 27, 2000), *reh 'g en banc denied* (March 6, 2000), *cert. denied*, 120 S. Ct. 2679 (U.S. 2000), it was held that:

“Although a reference need not expressly teach that the disclosure contained therein should be combined with another, the showing of combinability, in whatever form, must nevertheless be ‘clear and particular.’” (emphasis added).

It is submitted that the Examiner has not set forth a clear and particular showing of the combinability of Mouly and Moline. Significantly, Mouly relates to a TDMA (time division multiple access) radio network. On the other hand, Moline relates to transmitting a live broadcast over an entirely different protocol, primarily the TCP/IP network protocol. There is no suggestion in Moline (nor has the Examiner indicated a suggestion in any other reference) to utilize Moline's technique in a TDMA system as taught by Mouly. Accordingly, the proposed combination must fail for this additional reason. It is noted that the purported reason to combine the references set forth in the Office Action on page 3, paragraph 8, is illogical, i.e.:

“[Mouly] does not go into details of the data addressing as it is obvious in networking technology in order to send packet to their destination a header is required otherwise it would not be possible to sent them. Thus Mouly-Moline discloses the header information.”

Note that the Mouly system is based on TDMA which is not a packet-switched type system as the Examiner appears to be implying. There are no packets being utilized in the Mouly system. Accordingly, the purported motivation set forth in the Office Action is unfounded.

Claims 2-13 and 15-17 in this application are patentable over the cited references based at least upon their respective dependencies from Claims 1 or 14.

The Cheng , Boyle and Lindholm patents, cited to meet certain features of various dependent claims, do not cure the deficiencies of Mouly and Moline with respect to Claim 1 (or Claim 14). Thus, whether or not these references do disclose features in Claims 2-13 is not dispositive of the patentability of these claims based at least upon their dependencies from Claim 1.

Conclusion

In view of the foregoing, entry of this amendment, and the allowance of this application with Claims 1-17 are respectfully requested.

The above statements concerning the disclosures in the cited references represent the present opinion of Applicant's representative and, in the event that the Examiner disagrees, Applicant's representative respectfully requests the Examiner specifically indicate those portions of the references providing the basis for a contrary view.

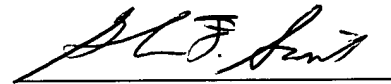
It is submitted that the claims in this application, as originally presented, are patentably distinct over the prior art cited by the examiner, and that these claims were in full compliance

with the requirements of 35 U.S.C. 112. Replacement of these claims, as presented herein, is not done for the purpose of patentability within the meaning of 35 U.S.C. §§101, 102, 103 or 112. Rather, these changes are made for clarification and to round out the scope of protection for the invention.

In the event that additional cooperation in this case may be helpful to complete its prosecution, the Examiner is cordially invited to contact Applicant's representative at the telephone number written below.

Respectfully submitted,
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